

OPERATIONS MEMO

For Public Release

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SUBJECT: Centralization of Bankruptcy Functions

I. PURPOSE

This operations memo identifies and describes changing roles and responsibilities as a result of the centralization of Sales and Use Tax bankruptcy functions in the Legal Department's Special Procedures Section (SPS). The bankruptcy procedures in place for Property and Special Taxes accounts will not be affected by the centralization of the Sales and Use Tax Department's bankruptcy specialists.

II. BACKGROUND

Previously, the bankruptcy work conducted by the Bankruptcy Specialists in the districts and Centralized Collection Section (CCS) was performed under the functional guidance of SPS. To address workload issues and promote uniformity, the Bankruptcy Specialist positions as well as the workload in the districts and CCS has been moved to a new Bankruptcy Unit within SPS.

III. BANKRUPTCY NOTICES AND LEGAL CASES IN IRIS

The districts, CCS and SPS collectively will be responsible for designating bankruptcy legal status for sales and use tax accounts in IRIS. SPS will no longer forward bankruptcy notices to the districts and CCS. In situations where the notice regarding commencement of a bankruptcy case is sent directly to the district, or when collection staff is made aware of the filing by the taxpayer or taxpayer's representative, or an immediate deadline is approaching, districts/CCS staff should enter the bankruptcy information and transmit the case in the IRIS legal subsystem. When a notice regarding commencement of a bankruptcy case is sent directly to the headquarters office of the Board, SPS should enter the bankruptcy information in the IRIS legal subsystem. All other bankruptcy related notices received by the districts or CCS should be sent to SPS (MIC 55).

Creating the legal case in IRIS requires input from audit staff regarding pending audits. The section/district that created the legal case in IRIS is responsible for communicating with district audit staff to determine if an audit is anticipated and when it will be completed.

IV. ACCOUNT MAINTENANCE AND COMPLIANCE ISSUES DURING BANKRUPTCY

SPS will be responsible for the account in bankruptcy legal status until the legal case is closed in IRIS. All account maintenance and compliance tasks required to prepare and file a proof of

claim in a bankruptcy case will be handled by SPS, such as obtaining returns to clear delinquent reporting periods. District staff should continue to provide taxpayers with all other tax account related services when they are requested by the taxpayer (e.g., provide split returns, close-out of permits, update addresses).

Clearing delinquencies, obtaining split returns, updating registration, monitoring audits for timely completion and billing for claims, addressing post-petition balances and collecting from non-bankrupt co-debtors will be the responsibility of SPS until the legal case is closed in IRIS. While the bankruptcy case remains open in IRIS, taxpayers should be referred to the assigned Bankruptcy Specialist in SPS, as identified in ACMS.

Collection action while a bankruptcy case is pending may violate the automatic stay. Districts and CCS staff should discontinue any pending or continuing collection actions when they learn a bankruptcy case has been filed. SPS may release or modify outstanding offsets, levies, withholds, or warrants that conflict with the automatic stay. If districts or CCS's staff become aware of continuing levies or other collection remedies that may violate the automatic stay, they should notify SPS immediately.

V. REVIEW, DISCHARGE, AND CASE CLOSING

After a taxpayer receives a discharge in bankruptcy or a proof of claim for tax liability is paid through a bankruptcy case, or both, it will be the responsibility of SPS to:

- Determine the extent to which a Board tax liability has been satisfied through payment
- Determine whether or not a Board tax liability has been discharged
- Legally adjust discharged tax liabilities using the IRIS legal adjustment process
- Apply DFB status to any liability periods in the IRIS Difference System (DIF) that are discharged as to all account holders, but will not be legally adjusted
- Post notes to ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, that specifically describe the discharged and non-discharged status of pre-bankruptcy balances that remain on each account
- Analyze whether or not a pre-bankruptcy Board tax lien has survived the discharge
- Release Board tax liens that have not survived a bankruptcy discharge
- Post notes to ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, specifically describing the property/conditions to which any surviving lien remains attached
- Post notes in ACMS, using the Legal Case Summary (BX) header from the Case Summary Notes window, regarding any joint debtor accounts (partnership, husband and wife co-ownership, etc.) as to dischargability for the specific joint debtor who has received a discharge

Generally, tax liens on liability that has been discharged survive bankruptcy if the liens attached to real or personal property prior to a bankruptcy filing. The Board retains the legal right to collect the tax liability, but only from the property to which the tax lien attached prior to the bankruptcy case and not from the tax debtor personally. Where a Board tax liability is discharged but the tax lien survives a bankruptcy discharge, the tax liability should not be legally adjusted.

When two or more persons are jointly responsible for payment of a Board tax liability (partnership accounts, husband and wife co-ownership accounts, etc.), SPS will be responsible for determining which liabilities, if any, have been discharged by a joint debtor's bankruptcy discharge. If all joint debtors have discharged liabilities, the liabilities may be legally adjusted. If not, the tax liability should not be adjusted, nor should the DFB status code be set. If a lien release is appropriate for a discharged joint debtor, but not for all joint debtors, a partial release as to the affected person should be issued.

Upon dismissal or effective closing of a bankruptcy case, or similar related circumstances, SPS will remove the case from legal status in IRIS. SPS will be responsible for generating an appropriate statement of account or demand billing when a case is removed from legal status.

District and CCS staff should review ACMS notes, as well as IRIS LGL system notes for any case that was in legal status, prior to initiating post discharge collection activities.

VI. MISCELLANEOUS

The roles and responsibilities described in this document pertain only to sales and use tax bankruptcy cases. They do not affect miscellaneous legal case types such as assignments (for the benefit of creditors), receiverships, and probate cases. District and CCS staff should continue to enter the information required in the IRIS legal subsystem for miscellaneous legal cases and are responsible for the associated account maintenance tasks necessary for SPS to file a timely claim.

When SPS requires assistance from district offices, district staff should assist in obtaining copies of records or other information from bankruptcy courts, other courts, or records repositories within their jurisdiction, as well as filing emergency proofs of claim, documents, or pleadings, as needed.

VI. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into CPPM Chapter 7.

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